

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

September 7, 2006

A meeting of the Board of Environmental Protection was held on Thursday, September 7, 2006 at the Holiday Inn / Ground Round, Augusta, Maine. Acting Chairman Ernest Hilton called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Donald Guimond, Richard Gould, Ernest Hilton, and Virginia Plummer
Matt Scott arrived at approximately 3:20 p.m.

Absent: Matt Scott and Nancy Ziegler
Board member Denis Culley departed at approximately 12:30

<u>Staff:</u>	Kurt Tidd	Bureau of Air Quality
	Marc Cone	Bureau of Air Quality
	John Glowa	Bureau of Land and Water Quality
	Linda Kokemuller	Bureau of Land and Water Quality
	Robert Green	Bureau of Land and Water Quality
	Mark Stebbins	Bureau of Land and Water Quality
	Don Witherill	Bureau of Land and Water Quality
	Hetty Richardson	Bureau of Land and Water Quality
	Robert Stratton	Bureau of Land and Water Quality
	Eric Kluck	Bureau of Land and Water Quality

Others: David P. Littell, Commissioner
Peggy Bensinger, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 5:00 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Liquified Natural Gas (LNG): Commissioner Littell reported that the Department did not have a formal update on the applications for LNG facilities, but stated that the Board would be advised when applications were submitted.

Hampden Landfill: Early discussions between the Town of Hampden and the owner of the Hampden Landfill resulted in a unanimous vote of the Town Council to move toward closure of the landfill by the end of 2009. The Department's technical review of a closure application for a commercial facility of this size will take up to one year and will be challenging because of issues associated with landfill gas. Commissioner Littell noted that any closure plan would not include expansion of the footprint or a vertical increase. The total remaining volume of the Landfill is less than 1 million tons; therefore, Casella has agreed to transport other in-state waste to the Old Town landfill site. The Hampden site will exclusively take construction demolition waste. Additionally, the closure plan would contain plans for tiering of the site with possible slope changes that would make slopes steeper than originally proposed.

Rulemaking: The Department has discovered that the statute does not provide authority to implement the buffer zones for vernal pools as set forth in Department's recent revisions to Chapter 335. Therefore, the Department will be seeking statutory changes necessary to implement the original intent of the buffer zone requirement. This was an oversight by the Department and action is forthcoming to correct this matter.

B. CHAIRMAN'S COMMENTS: NONE

C. EXECUTIVE ANALYST COMMENTS: None

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: Reviewed

F. EXECUTIVE SESSION: None

II. CONSENT AGENDA ITEMS

Board voted (8-0-0-2) on a motion to approve consent agenda item 1 as presented.

1. DRAGON PRODUCTS COMPANY, INC., Thomaston – Administrative Consent Agreement (BAQ)

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer voted to support the motion. Board members Matt Scott and Nancy Ziegler were absent.

Board voted (8-0-0-2) on a motion to approve consent agenda items 2 and 3 as presented.

2. DRAGON PRODUCTS COMPANY, INC., Kennebunk – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)
3. CITY OF CALAIS, Calais – Administrative Consent Agreement and Enforcement Order. (BLWQ – Water)

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, and Virginia Plummer voted to support the motion. Board members Matt Scott and Nancy Ziegler were absent.

III. Regular Agenda

1. BARRY MAZZAGLIA, TRUSTEE OF THE MAZZAGLIA FAMILY TRUST, Naples / Appeal by William T. Carline III (Appellant Standing - Decision)

Staff: Linda Kokemuller, Bureau of Land and Water Quality

Staff: Robert Green, Jr., Bureau of Land and Water Quality

The Board voted (7-1-0-2) on a motion to find that Mr. William Carline III did not have standing to appeal the license decision, finding that he is not an aggrieved person, and to dismiss the appeal and approve the Department's draft proposed order with the following amendment:

[AMENDMENT] Page 3 / Second Paragraph

...Sebago Lake or any other body of water in Maine." While the use of a potentially affected resource can be a basis to establish that a party is aggrieved, in this case there was no description of impacts the proposed buffer reduction would have on the resource or the appellant's use of it. This general assertion...

...evidence of particularized injury to the ~~applicant~~ appellant or his property...

The vote was taken pursuant to 38 M.R.S.A. Section 341-D(4) and 06-096 CMR Chapter 2.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Richard Gould, Donald Guimond, Ernest Hilton, and Virginia Plummer voted to support the motion. Board member M. Wing Goodale voted opposed. Board members Matt Scott and Nancy Ziegler were absent.

2. RICHARD R. STORER / AFTER THE FACT DENIAL – SHORELINE STABILIZATION (Appeal)

Staff: James Cassida, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to deny the appeal by Mr. Richard Storer and affirm the Commissioner's decision in Department Order L-22842-2B-A-N, denial of an after-the-fact permit for shoreline stabilization and approve the draft proposed order with the following amendment:

[AMENDMENT] Page 3 of 4 **Section B. WETLAND CONSIDERATIONS:**

Impacts to the resource resulting from the project. "Great ponds are among the State's most sensitive protected natural resources. Aquatic life is richest and most abundant in the shallow water about the edges of lakes. This zone in which light penetrates to the bottom of the lake is known as the littoral zone. When a permanent structure is constructed in a great pond, the littoral zone, which provides important habitat for bottom dwelling organisms, is permanently altered. In addition, the buffer area located directly adjacent to the lake was permanently altered as well, affecting the many different species of wildlife that utilize this area."

The vote was taken pursuant to 38 M.R.S.A. Section 341-D(4) and 06-096 CMR Chapter 2.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, and Virginia Plummer voted to support the motion. Board members Matt Scott and Nancy Ziegler were absent.

BOARD RECONVENED AT 1:00 TO ADDRESS THE REMAINDER OF AGENDA

3. MAINE CENTRAL RAILROAD COMPANY / APPLICATION FOR A VARIANCE TO OPERATE AN EXTERNALLY DRAINED QUARRY (request for BEP jurisdiction)

Staff: Mark Stebbins, Bureau of Land and Water Quality

The Board voted (0-7-0-3) on a motion to assume jurisdiction of the 10-acre phase one application for a variance for external drainage and approve the draft proposed procedural order amended to include the word "variance" when describing the type of application.

The vote was taken pursuant to 38 M.R.S.A. Section 341-D(2) and 06-096 CMR Chapter 2.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, and Virginia Plummer voted to support the motion. Board members Denis Culley, Matt Scott and Nancy Ziegler were absent.

4. CHAPTER 500, STORMWATER MANAGEMENT and CHAPTER 502, DIRECT WATERSHEDS OF LAKES MOST AT RISK FROM NEW DEVELOPMENT AND URBAN IMPAIRED STREAMS / AMENDMENT (post to public hearing)

Staff: Don Witherill, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to post amendments to Chapters 500, Stormwater Management and Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams to public hearing on October 5, 2006. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(1-B) and 420-D.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, and Virginia Plummer voted to support the motion. Board members Denis Culley, Matt Scott and Nancy Ziegler were absent.

5. CHAPTER 305, PERMIT BY RULE STANDARDS and CHAPTER 310, WETLANDS AND WATERBODIES PROTECTION RULES / AMENDMENTS (post to public hearing)

The Board voted (7-0-0-3) on a motion to post amendments to Chapters 305, Permit By Rule Standards and Chapter 310, Wetlands and Waterbodies Protection Rules to public hearing on October 5, 2006. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(1-B) and 480-A et seq.

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, and Virginia Plummer voted to support the motion. Board members Denis Culley, Matt Scott and Nancy Ziegler were absent.

6. CHAPTER 543, RULES TO CONTROL THE SUBSURFACE DISCHARGE OF POLLUTANTS / REPEAL AND REPLACE (adoption)

Staff: Robert Stratton, Bureau of Land and Water Quality

Staff: Eric Kluck, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to adopt Chapter 543, Rules to Control the Subsurface Discharge of Pollutants (repeal and replace) as presented. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(1-B) and 413(1-B).

Board members Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer and Matt Scott voted to support the motion. Board members Denis Culley and Nancy Ziegler were absent.

INFORMATIONAL:

NOx Offset Trade Credits

[Boston Medical District / Louisiana-Pacific, New Limerick]

Staff: Marc Cone, Bureau of Air Quality

Dragon Products Company / Application for Solid Waste Facility Closure and Reclamation of Cement Kiln Dust and Waste Clinker Piles -- Thomaston.

[Procedural Update]

Staff: Cynthia S. Bertocci, Executive Analyst to the Board

Next Regular Board Meeting –Thursday, October 5, 2006 – Holiday Inn, Augusta